IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

WP(C).No. 22465 of 2007(Y)

PETITIONER:

M/S LOTUS 8 APART HOTEL,
A UNIT OF INFRA HOTELS & RESORTS LTD.,
VAPPALASSERY P.O., NEDUMBASSERY.
REPRESENTED BY ITS DIRECTOR OF
INFRA HOTELS & RESORTS LTD.,
MR.JOHN GEORGE.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.ANIL D. NAIR

RESPONDENTS:

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1. INTELLIGENCE OFFICER,
COMMERCIAL TAXES DEPARTMENT,
SQUAD NO.1, MATTANCHERRY AT MINI CIVIL STATION,
ALUVA.

2. DEPUTY COMMISSIONER OF COMMERCIAL
TAXES(APPEALS), ERNAKULAM.

3. INSPECTING ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES(REV),
MATTANCHERRY, KOCHI-2.

4. THE STATE OF KERALA, REPRESENTED BY
THE SECRETARY(TAXES), GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.MATHEW GEORGE VADAKKEL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C) No.22465 of 2007-Y

Dated this the 23rd day of July, 2007.

J U D G M E N T

The petitioner is running a hotel and it is liable to pay luxury tax under the Kerala Tax on Luxuries Act, 1976. An inspection was held by the Officers of the Commercial Tax Department in the business premises of the petitioner. It was found that the petitioner was not filing the returns under the Kerala Tax on Luxuries Rules, 1976. The Officers found that the petitioner was promptly collecting luxury tax between April 2006 and December 2006 and a total amount of Rs.10,98,617/- was collected. So, notice dated 26-2-2007 was given to the petitioner proposing to impose penalty under Section 17A of the above-said Act. The petitioner filed reply dated 22-3-2007. After considering the reply, by Ext.P1, a penalty of Rs.21,97,234/- was imposed on the petitioner, for not filing the monthly returns and also for non-payment of tax collected, in time. The petitioner filed Ext.P2 appeal and along with that appeal, it has preferred Ext.P4 stay petition. The said stay application was considered and disposed of by Ext.P6. The petitioner was called upon to pay 50% of the penalty amount and furnish security for the balance amount. This writ petition is filed challenging Ext.P6. According to the petitioner, it could have paid the tax if only the registration certificate was issued to it. In fact, as evident from Ext.P7 certificate, it was

issued on 30-3-2007. Further, the entire tax with interest was already remitted on receipt of the notice, it is pointed out. So, the petitioner submits, stay on more liberal terms should have been granted.

2. I heard the learned Government Pleader for the respondents also. The Government Pleader pointed out that the petitioner was wilfully withholding the tax collected, without paying it. So, the imposition of penalty is fully justified and therefore, the stay order cannot be said to be illegal or improper.

3. Ext.P6 is only an interim order. This court can interfere with the said order on very limited grounds. Unless it is found to be perverse or arbitrary, this court is not justified in interfering with the same. Going by the facts of the case, it is clear that the petitioner collected luxury tax and failed to pay it. It may have defence, for not paying it. Pending decision of the matter by the appellate authority, I think the interim order granted in favour of the petitioner is a fair and reasonable order. It has been called upon to pay only 50% of the penalty amount and for the balance amount it was directed to furnish security. Therefore, I find no ground to interfere with Ext.P6 order. Accordingly, the Writ Petition fails, and it is dismissed.

K.BALAKRISHNAN NAIR,
JUDGE.

MS